IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
BRENT C. PARENT et al.)	Group Art Unit 3693
)	
Serial No. 09/504,000)	Examiner Jagdish Patel
)	
Filed: February 14, 2000)	Confirmation No. 7392
)	
For: SYSTEM AND METHOD FOR MODELING)	Attorney Docket 1-28703
A SIMULATED FLEET OF ASSETS)	

Box After Final
Commissioner For Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW
AND ACCOMPANYING REMARKS

Honorable Sir:

The applicants request review of the final rejection dated December 13, 2007 in

the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice Of Appeal pursuant to the procedure specified

in the Notice published in the Official Gazette on July 12, 2005.

The Examiner rejected Claims 1, 2, and 22 under 35 U.S.C. 102(a) as being

anticipated by the Pisula et al. reference. These rejections are respectfully traversed.

Independent Claim 1 defines the invention as an electronic system for modeling

a simulated fleet that includes a simulated fleet configuration unit that is configured to

allow a user to add one or more assets to the simulated fleet, wherein each asset has a

parameter associated therewith. A reporting and analysis module is configured to

generate a report having a composite output that corresponds to the parameter and is

characteristic of all of the assets in the simulated fleet. Lastly, a communications

1

interface is configured to facilitate electronic remote access of the system by the user. Independent Claim 22 defines the invention in a similar manner.

It is well established that in order to anticipate a claim, a reference must teach each and every element of the claim. In other words, anticipation requires the presence of a single prior art reference that discloses each and every element of the claimed invention as arranged in the claim.

The Pisula et al. reference simply does not disclose each and every element of the claimed invention and, therefore, cannot anticipate the claimed invention. Specifically, the Pisula et al. reference does not disclose an electronic system for modeling a simulated fleet that includes a simulated fleet configuration unit or any of the other specifically defined simulated elements recited in independent Claims 1 and 22. Thus, the rejections of the claims as being anticipated by the Pisula et al. reference are simply incorrect.

The Examiner attempts to avoid this deficiency by stating that "the descriptive term 'simulated' in the limitation 'simulated fleet' is treated as non-functional descriptive material or descriptive data because it does not functionally change either the fleet configuration unit or the reporting and analysis module." In that same paragraph, however, the Examiner states that "[n]onfunctional descriptive material cannot render non-obvious an invention that would have otherwise been obvious" (emphasis added). Thus, the Examiner's explanation of his rejection (i.e., the invention is obvious) undercuts his actual basis for that rejection (i.e., the invention is anticipated).

The question of whether the claimed simulated fleet is anticipated by the Pisula et al. reference is quite different from the question of whether the claimed simulated fleet would have been obvious in view of the Pisula et al. reference. Because the Examiner has cited no disclosure whatsoever in the Pisula et al. reference that the structure described and illustrated therein can or should be used in connection with a simulated fleet, as specifically claimed, the anticipation rejection is clearly improper and must be withdrawn.

The Examiner further states that "the claimed invention recited 'simulated' only in terms of intended use without distinguishing the structure in terms of the simulated assets." This statement is incorrect. Independent Claims 1 and 22 both specifically define invention as including, among other things, a simulated fleet configuration unit configured to allow a user to add one or more assets to the simulated fleet. This is a positive and clear limitation of the invention, not merely a statement of intended use as suggested by the Examiner. Thus, this limitation and the other limitations of the claims clearly and unambiguously distinguish the invention structurally from the Pisula et al. reference.

Claim 1 requires "a simulated fleet configuration unit configured to allow a user to add one or more assets to said simulated fleet." The Pisula et al. reference, on the other hand, relates to real assets and provides "a system and method [for] accessing freight transportation network information over the internet" (see Page 2, Lines 11-12). Similarly, the Pisula et al. reference states its field as relating "generally to systems and methods for accessing information over the internet, and more particularly for graphically organizing freight transportation network information on a map over the internet" (see Page 1, Lines 13-15). Further, the Pisula et al. reference solves problems related to tracking of real assets wherein "many of the major transportation industries provide various traditional methods by which a customer may obtain the current status of their shipments" (see Page 2, Lines 20-21). Thus, the discussion of background art clearly defines the problems that the Pisula et al. reference solves as providing information related to real assets, rather than simulated assets (see Page 2, Lines 1-6).

The Examiner refers to Figs. 4 and 5 of the Pisula et al. reference as examples relating to "a simulated fleet configuration unit" as defined in Claim 1. However, the Pisula et al. reference does not teach that Figs. 4 and 5 (or any of the other figures, for that matter) relate to a "simulated fleet." Indeed, the Pisula et al. reference teaches away from a simulated fleet concept in that it recites applications for actual fleets. For example, "[a] fleet Updating feature provides the user with an ability to add and/or delete equipment from their pools" (see Page 6, Lines 9-11). Confirmation of the

3

"real" nature of the Pisula et al. reference is found in the description regarding exemplary diagram Fig. 4. As discussed therein, the information contained in Fig. 4 relates to real assets where a "user can view, print and export Electronic Data Interchange reports, such as weight messages, inventory reports, arrival notices, and standing orders" (see Page 6, Lines 4-11). When read in context with the field, background, and summary of the Pisula et al. reference, it is clear that Fig. 4 relates to real assets (see Page 1, Lines 12-26 and Page 2, Lines 1-28).

Accordingly, the Pisula et al. reference unambiguously teaches a system for managing fleets of real assets. Thus, the Pisula et al. reference does not disclose a "simulated fleet." The claims are, therefore, clearly patentable over the Pisula et al. reference.

Claim 2 was rejected by the Examiner as being anticipated by Pisula. Claim 2 depends from Claim 1 and, for at least the same reasons as Claim 1, is also in condition for allowance. Additionally, however, the Examiner has not addressed in any manner either of the following elements of Claim 2: (1) a fleet search module including a first add-to-fleet feature; (2) a simulated fleet module including an add-asset feature, and (3) a market search module including a second add-to-fleet feature. None of these limitations in Claim 2 are addressed by the Examiner, and none are found in the Pisula et al. reference. Thus, for this additional reason, Claim 2 is clearly independently patentable over the Pisula et al. reference.

Similarly, some of the limitations of independent Claim 22 (relating to the combination of pre-existing fleet assets and simulated assets) have not been specifically addressed by the Examiner. As discussed above, the Pisula et al. reference relates to real assets and provides "a system and method [for] accessing freight transportation network information over the internet" (see Page 2, Lines 11-12). Clearly, the assets discussed in the Pisula et al. reference are not simulated. Claim 22 defines the invention as including a simulated fleet configuration unit that is configured to allow a user to add one or more simulated assets to the simulated fleet, wherein each pre-existing and simulated asset having a parameter associated therewith. Not only does the Pisula et al. reference fail to contemplate the use of

simulated assets, but it does not disclose the use of <u>both simulated and pre-existing</u> <u>fleet assets</u> with a simulated fleet configuration. Thus, Claim 22 is also clearly independently patentable over the Pisula et al. reference.

Respectfully submitted,

Richard S. MacMillan
Reg. No. 30,085

MacMillan, Sobanski & Todd, LLC
One Maritime Plaza, Fifth Floor
720 Water Street
Toledo, Ohio 43604
(419) 255-5900